

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**AT HUNTINGTON**

**OHIO RIVER VALLEY ENVIRONMENTAL  
COALITION, INC., WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC., and  
SIERRA CLUB**

**Plaintiffs,**

**v.**

**Civil Action No. 3:09-1167  
Judge Robert C. Chambers**

**HOBET MINING, LLC,**

**Defendant.**

**MOTION FOR EXPEDITED HEARING**

Hobet Mining, LLC (hereinafter “Hobet”) the Defendant in the above-captioned case, moves the Court for an expedited hearing to be set for August 31, 2011, if the Court’s schedule permits. Hobet requests this hearing for the purpose of securing an order of the Court to verify the basis of design for the Fluidized Bed Reactor (FBR) treatment system selected for installation. The Parties are trying to resolve the matter without requiring the involvement of the Court. As explained below, time is of the essence based on the schedule of the Hobet 22 project. For that reason, Defendant seeks a hearing in the event that the discussions with Plaintiffs prove unfruitful. In support of its motion, Hobet states the following facts.

In August 2010 the Court conducted a trial regarding Hobet’s inability to comply with its effluent limitation for selenium at NPDES permit WV1022911. The Court issued its Order Specifying Relief on October 8, 2010 (Doc. 75). It ordered Hobet to install treatment for selenium at Outfall 001 by May 1, 2013 (¶ 1), and adopted the preliminary schedule submitted by Hobet to commence the process of evaluation, design, and construction for such a treatment

system (§ 2). Hobet was further ordered to submit an “additional proposed preliminary schedule and narrative explanation once a treatment technology is selected[.]” Among other things the additional “schedule must identify the proposed design flow capacity of the Treatment System [and] the measures to be undertaken to establish any equalization and diversion” for the treatment system for the NPDES permit WV1022911, Outlet 001 (§ 3).

Hobet selected FBR as the treatment system for Outlet 001. The treatment system is the same system ordered by the Court to be installed by Apogee Coal Company in the companion case tried with Hobet (Civil Action No 3:07-0413, Doc. No. 226). Hobet submitted this proposed treatment system together with an additional proposed schedule to the Special Master and the plaintiffs as required by a previous Order of the Court on June 17, 2011 (Doc.106-1). The June 17, 2011 submission identifies the volume of water that Hobet proposes to store and treat.

The Special Master has approved the treatment systems selected by Hobet, and confirmed the basis of design for this treatment plant on July 20<sup>th</sup>. (*See*, Attachment A, e-mail communication from Special Master James Kyles to parties). Notwithstanding the acceptance by the Special Master of the basis of design for the treatment system, and specifically the volume of water that will be treated, the Plaintiffs have questioned the adequacy of the basis of design for Hobet’s treatment system, which Hobet and the Special Master acknowledge will capture and treat the flow from a one year, 24 hour storm.

The lack of agreement as to the appropriate basis of design for the treatment plant imperils the schedule imposed by the Court and successfully achieved by Hobet to date. For example, on Friday, September 2, CH2M Hill will initiate procurement for certain pieces of equipment that have long lead times for construction and delivery. Other tasks that must be

undertaken and completed timely for construction to begin at the Hobet site are also underway or will begin in coming weeks. Hobet cannot design a treatment plant without confirmation that the system it is currently designing and constructing complies with the Court's order.

Accordingly, Hobet requests that the Court set a hearing for August 31, 2011, to hear testimony of employees of Hobet Mining and Patriot Coal, and their consultant, CH2M Hill. The Court is also requested to request the Special Master to be present for examination, as appropriate, to review his recommendation to accept the basis of design for the treatment system as presented in the submission of June 17, 2011.

Plaintiffs' counsel has reviewed this motion and, without agreeing to the factual assertions made herein, does not oppose it.

Respectfully submitted,

HOBET MINING, LLC

By Counsel

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**CERTIFICATE OF SERVICE**

I, Blair M. Gardner., do hereby certify that a true and exact copy of the foregoing  
MOTION FOR EXPEDITED HEARING was filed electronically with the Clerk of the Court  
using the CM/ECF system on August 23, 2011, upon the following.

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/s/ Blair M. Gardner.  
BLAIR M. GARDNER